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In re application of
Barbara Westfield
Serial No. 09/551,973
Filed: April 14, 2000
For: BAKING RACK ASSEMBLY AND METHOD FOR
AUTOMATIC BREAD MAKING MACHINE

DECISION ON
PETITION

This is a response to the PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION (MPEP § 711.03(c)II and 37 CFR § 1.181) filed June 10, 2004. The petition requests that the abandonment, as set forth in the Notice of Abandonment of May 6, 2004, for failure to timely pay the required issue fee within the statutory period of three months from the mailing date of the Notice of Allowance be withdrawn. The petitioner asserts that the Notice of Allowance was not received at the applicant's correspondence address.

DECISION

The instant request is accepted as a timely petition under 37 C.F.R. 1.181 (no fee), and is evaluated under the procedures regarding an acceptable showing of non-receipt of an office action, TMOG 1156 O.G. 53, November 16, 1993, (see also MPEP 711.03(c) - NEW PROCEDURE TMOG 1170 O.G. 114). A review of the petitioner's evidence indicates that the request has merit. The evidence presented is sufficient to establish that the applicants or applicant's representative did not receive the Notice of Allowance, mailed December 31, 2003. The evidence provided includes a statement by the petitioner that the Notice of Allowance, mailed December 31, 2003 was not received, a statement that a search of the file and docket records was made, and a statement that the search revealed the Notice of Allowance was not received. Also provided is a copy of the attorney's application docket records where the Notice of Allowance would have been posted had it been timely received. A further review of the USPTO application file also reveals that the Notice of Allowance, which was mailed December 31, 2003, contained an incorrect serial number and mailing address.

Therefore, the abandonment is hereby withdrawn, and the application is returned to pending status. The application shall be forwarded to the examiner for prompt remailing of the Notice of Allowance to the correct correspondence address and restarting of the statutory period of response from the remail date thereof.

The Petition is **GRANTED**.

JStone

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